(2)

IN THE HIGH COURT OF JUDICATURE : JABALPUR.

Writ Petition No 4083 /1999.

PETITIONER : Smt. Vimla Wd/o Shri Baliram Chhatri resident of Tilaknagar, Bilaspur.

- Versus -

RESPONDENTS : 1- State of Madhya Pradesh Through : Secretary, Department of Revenue, Vallabh Bhavan, Bhopal.

2- Additional Commissioner, Bilaspur Division, Bilaspur.

3- Additional Collector, Collectorate, Bilaspur.

4- Sub Divisional Officer (Revenue) Kota, District- Bilaspur.

5- Udaychand s/o Shri Chhadiram Netam, resident of Usiapur, Tahsil - Takhatpur, District- Bilaspur.

PETITIONER UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION ETC.

1- Particulars of the Petitioner : As above.

2- Particulars of the Respondents : As above.

(85)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP No. 408/95 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

26-7-2005

Shri Manindra Shrivastava, Sr. Advocate with Shri Anil Singh Rajput, Advocate for the petitioner.

Shri Yashwant Singh Thakur, Govt. Advocate for the State/ respondents No.1 to 4.

Shri P. P. Sahu, counsel for respondent No.5.

The petitioner has preferred this writ petition questioning the legality, propriety and correctness of the order dated 28-8-1995 passed by the Sub Divisional Officer, respondent No.4, also the order dated 27-2-1997 passed by the Additional Collector, respondent No.3, in appeal No.1-A/23/95-96, and also the order dated 11-5-99 passed by the Additional Commissioner, respondent No.2, in revision No.180-A/23/96-97.

Brief facts necessary for the disposal of this writ petition are that respondent No.5 herein filed a complaint Annexure-P/1 before the Collector on 22-2-93 with the allegations that the petitioner herein got his land illegally registered in her name and has taken the possession. He is a tribe by caste and the petitioner herein is in illegal possession of his land, therefore, his land be reverted back to him. On this complaint, the Additional Collector made an enquiry and recorded the statement of Udaychand on 9-3-93 and called for the report of Patwari Halka Annexure-P/3. After recording the finding Annexure-P/4, he forwarded the same to the S.D.O. for necessary

(पीठासीन)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

action. As a consequence of that, the S.D.O. after registering the case under Section 170 (B) of the Madhya Pradesh Land Revenue Code, 1959, proceeded with the enquiry and passed the order dated 28-8-95 that the land in question has been transferred in the name of the petitioner who is not a tribe and same has been purchased at much below the prevalent price in the market at the relevant time. He also recorded the finding that the petitioner is a Chatri which is sub-caste of 'Kanwar', which is a tribe class, but being Chatri, the petitioner is not entitled for the benefit which are available to S.T., and ultimately, he ordered for restoration of the land to respondent No.5.

Being aggrieved by the same, the petitioner herein preferred an appeal before the Additional Collector and learned Additional Collector affirmed the order passed by the S.D.O.. Then the petitioner herein again preferred a revision before the Additional Commissioner and the Additional Commissioner also affirmed the order, therefore, questioning the legality of all the three orders the petitioner herein filed this writ petition.

I have heard Shri Manindra Shrivastava, Sr. Advocate with Shri Anil Singh Rajput, Advocate for the petitioner, Shri Yashwant Singh Thakur, Govt. Advocate for the State/ respondents No.1 to 4 and Shri P. P. Sahu, counsel for respondent No.5.

ये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as the applicability of Section 170(B) of the Madhya Pradesh Land Revenue Code, 1959 is concerned, admittedly, the said provision was not attracted in this case for the reason that the transfer in question by the registered sale deed was made in favour of the petitioner by respondents in the year 1985 whereas, the provisions of Section 170(B) are attracted only when the transfer pertains prior to 24-10-80, therefore, finding of the S.D.O. to this extent is illegal and contrary to the provisions of Section 170 (B) of the Madhya Pradesh Land Revenue Code.

Now, the question left is that the S.D.O. has recorded that the petitioner is not a tribe whereas, the petitioner is claiming herself to be a tribe and certificate to that effect Annexure-P/7 issued by Tehsildar on 23-4-90 was submitted by the petitioner, but the same has not been taken into consideration by the S.D.O. and in paras-1 & 3 of page 3 of his order it is recorded that the purchaser is of 'Kanwar' caste, S.T. class, but he is not tribe. In para-1 he has recorded that any person even if belonging to 'Kanwar' tribe is not entitled for the benefit of the constitutional rights as tribe. But, he has not expressed any opinion about the certificate Annexure-P/7 issued in favour of the petitioner. When the petitioner was claiming herself to be a tribe, therefore, the provisions of sub-section (6) of Section 165 were not attracted.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the given situation, learned S.D.O. in order to ascertain the claim put forwarded by the petitioner that she belongs to a tribe community, the S.D.O. ought to have adopted the procedure as laid down by the Hon'ble Apex Court in the matter of **KUMARI MADHURI PATIL AND ANOTHER VS. ADDL. COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS** reported in **AIR 1995 SUPREME COURT 94** wherein the Hon'ble Apex Court laid down a procedure that how the verification of the caste certificate by the scrutiny committee is to be done. If the petitioner is able to establish that she belongs to S.T., in that case, clause-2 of sub-section (6) of Section 165 will not be attracted in this transaction. Therefore, only on this ground the impugned orders are liable to be set aside, as such the impugned orders are set aside.

The matter is sent back to S.D.O., Kota with a direction that in the first instance, he should refer the matter to the committee for ascertainment of the caste of the petitioner and on receiving the report after giving an opportunity to the petitioner and complainant Udaychand, decide the matter afresh in accordance with law.

The writ petition is disposed of accordingly.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Barve

(पीछे देखिये)